

IN RE:)
)
)
vs.) No.
)
)
LAFAYETTE COUNTY C-1)
SCHOOL DISTRICT)

This matter comes before the Chairperson on motions made by each party. A phone conference was conducted on October 5, 2000, at which each party was represented by counsel. After due consideration of the oral arguments by telephone and the extensive documentation filed by each party, the order as to each matter is set forth below.

By letter dated September 15, 2000 to the Chairperson, the Respondent submitted for review the transcript of the hearing between these same parties

held on June 20 & 21, 2000, and a copy of the Federal Litigation filed by Petitioner seeking, inter alia, a remand to receive additional evidence.

On September 29, 2000, the Respondent mailed the REPLY MEMORANDUM IN SUPPORT OF RESPONDENT LAFAYETTE COUNTY C-1 SCHOOL DISTRICT'S MOTION TO DISMISS DUE PROCESS REQUEST.

Decision

After the June 20 & 21 hearing by a previous panel, the Petitioner choose to file another due process request rather than move to reopen the earlier hearing.

This procedure:

“Risks incompatible decisions from the hearing officers and all the accompanying problems associated with res judicata, collateral estoppel, etc.”

Heather S. By Kathy S. v. State of Wis., 125 F.3d 1045, 1062 (7th Cir. 1997). If the Federal Court grants Petitioner's pending request for a remand to the previous panel, similar issues would arise.

The doctrine of res judicata is applicable to administrative proceedings. See Plough v. West Des Moines Comm. Sch. Dist. 70 F.3d 512 (8th Cir. 1995). The doctrine of res judicata refers to both “issue preclusion” (issues litigated and decided) and “claim preclusion” (issues not litigated, but should have been advanced). See Tyrus v. Schoemehl, 93 F.3d 449, 453 n5 (8th Cir. 1996).

In this matter, the Petitioner has filed his “Specification of Issues and 300.507(c)(2) Disclosures”. Counsel for Petitioner candidly admits that a part of the listed issues were litigated in the previous due process hearing. However, Counsel for Petitioner zealously argues that claim preclusion is not applicable to the remaining listed issues.

After extended review of the numerous documents, cited authority and consideration of the issues, it is apparent the remaining listed issues before this panel could have been advanced at the prior hearing. The doctrine of res judicata is applicable. RESPONDENT LAFAYETTE COUNTY C-1 SCHOOL DISTRICT'S MOTION TO DISMISS DUE PROCESS REQUEST is granted.

PRO HAC VICE

Procedural Background

By letter dated August 9, 2000 to the Chairperson, the Petitioner's counsel asked to appear Pro Hac Vice.

On August 22, 2000, the Respondent mailed RESONDENT LAFAYETTE CO. C-1 SCHOOL DISTRICT'S OPPOSITION TO MOTION TO APPEAR PRO HAC VICE.

On August 26, 2000, the Petitioner mailed an untitled document in reply to the issues raised in Respondent's opposition filing.

By letter dated September 11, 2000 to the Chairperson, the Petitioner's counsel submitted additional documents in support of his request.

On September 12, 2000, the Respondent mailed RESPONDENT LAFAYETTER CO. C-1 SCHOOL DISTRICT'S SUPPLEMENTAL OPPORSITION TO MOTION TO APPEAR PRO HAC VICE.

By letter dated September 25, 2000 to the Chairperson, the Petitioner's counsel stated local counsel had been obtained.

Decision

By virtue of the decision to grant RESPONDENT LAFAYETTE COUNTY C-1 SCHOOL DISTRICT'S MOTION TO DISMISS DUE PROCESS REQUEST and the notice of local counsel, this request is moot.

CONTINUANCE

Procedural Background

On August 8, 2000, counsel for Petitioner executed a WAIVER AND ACKNOWLEDGEMENT. The same document was executed by counsel for Respondent on August 15, 2000. The document sets the hearing date on December 4-6, 2000 and a decision date of January 6, 2000.

By letter dated September 7, 2000, to the Chairperson, Petitioner asked that the hearing be rescheduled.

Decision

By virtue of the decision to grant RESPONDENT LAFAYETTE COUNTY C-1 SCHOOL DISTRICT'S MOTION TO DISMISS DUE PROCESS REQUEST, this request is moot.

STEPHEN A. MARTIN
CHAIRPERSON

DATE

CERTIFICATE OF SERVICE

I, Stephen A. Martin, hereby certify that a true and correct copy of the foregoing document was served, this ____ day of _____, by:

By placing it in a United States mailbox, postage prepaid to;

Via facsimile transmission telephone number () ____ - ____ at
_____ M;

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